Decision 01-10-033 October 10, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Compliance Application of Pacific Gas & Electric Company (PG&E) for Approval of Year 2001 Low Income Programs, in Compliance with Ordering Paragraph 4 of Decision 00-09-036 (U 39 M).	Application 00-11-009 (Filed November 6, 2000)
Application of Southern California Gas Company (U 904-G) For Authority to Continue Low Income Assistance Programs and Funding Through 2001.	Application 00-11-011 (Filed November 6, 2000)
Application of San Diego Gas & Electric Company (U 902-E) for Authority to continue Low Income Assistance Programs and Funding Through 2001.	Application 00-11-012 (Filed November 6, 2000)
Southern California Edison Company Compliance Application for Approval of Year 2001 Low Income Program Plans.	Application 00-11-020 (Filed November 6, 2000)

ORDER DENYING REHEARING OF DECISION 01-05-033

I. SUMMARY

By this Order, the Commission denies rehearing of Decision (D.) 01-05-033, (the "Decision"), which provides for deployment of funding for low-income assistance programs on an expedited, interim basis in order to address the needs of low-income customers during the energy crisis. After considering the arguments in the application for rehearing made by Residential Service Companies' United Effort ("RESCUE"), we find no legal error has been established.

II. BACKGROUND

The California Alternate Rates for Energy (CARE) program provides rate assistance, and the Low-Income Energy Efficiency (LIEE) program provides weatherization and energy efficiency services. The Commission allocates funding for low-income assistance programs, and has authority oversee and implement programs, while the investor-owned utilities are responsible for program administration. Funding for these programs comes from two sources. First, the four largest utilities (Pacific Gas & Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company), collect approximately $140 million per year for the CARE program, and $60 million per year for the LIEE services program through a public purpose surcharge imposed on ratepayers. In addition, the California Legislature passed two bills this year (SBX1 5 and ABX1 29) which appropriated substantial sums to augment these programs. With the passage of these two bills, the LIEE program was allocated an additional $45 million, and the CARE program funding was supplemented by $100 million. An additional $140 million was appropriated to the Department of Community Services and Development (DCSD) for administering the Low-Income Home Energy Assistance Program (LIHEAP). These LIHEAP services are delivered through a network of community-based, non-profit organizations referred to as LIHEAP providers.

The primary challenge of D.01-05-033 was not only to allocate the new and carryover funding for the CARE and LIEE programs, but also to identify the best method for rapid deployment of the funding in order to meet the needs of low-income customers *during* the current energy crisis. Emphasis was placed on implementing program benefits during the summer of 2001, a particularly critical time. It was anticipated that the benefits and services from these programs would allow customers to reduce their monthly bills through rate assistance, and reduce peak load demand through energy saving devices. Considerations included how to best reach eligible households, and how to coordinate the range of services available to those customers. The Decision set forth three recommended leveraging strategies for rapid deployment of the funds. It was

determined in the Decision that DCSD's community-based network of providers would be the most efficient method for rapid deployment. The Decision also recognized that in some cases, it would be necessary to employ non-LIHEAP providers (private companies) in order to ensure full geographic service coverage and rapid deployment of services. A range of approaches was provided to the utilities, allowing considerable flexibility in deciding which approach to select.

The allocation of funding was based on allocation factors adopted by the Commission in Resolution E-3585. The allocation of LIEE funding took into consideration the disproportionate availability of carryover funding among the utilities. New funding was allocated in greater proportions to utilities with low or underfunded carryover accounts, with less new funding designated to utilities with high carryover account balances.

III. DISCUSSION

RESCUE advances three arguments in its application for rehearing. First, RESCUE argues that the allocation of LIEE funds discriminates against PG&E ratepayers in violation of the United States and California constitutions. Second, RESCUE contends that the Decision allows preferential treatment to non-profit companies with existing ties to state agencies, in violation of the Commerce Clause. Finally, RESCUE asserts that the 3-month commercial paper interest rate the Commission applied to carryover funds was improper.

A. The Decision Does Not Discriminate Against PG&E Ratepayers

RESCUE contends that the decision not to allocate new LIEE funding to PG&E on the basis that it failed to use previous LIEE funding violates Equal Protection principles. RESCUE's argument is that PG&E customers are entitled to a share of the new funding appropriated by SBX1 5, since they have contributed to the fund by paying their state taxes. (Appl. for Rehearing at pp. 1-2.) This does not set forth a violation of the equal protection clause, and we find no merit to this argument. RESCUE also seems

to imply that PG&E ratepayers are being deprived of funds paid for through the public purpose surcharge. To the contrary, the Decision makes clear that all carryover funding will be utilized for programs administered in the service territory where the over-collection occurred, therefore, no funding paid for by PG&E ratepayers is being diverted. (Decision at p. 52; Appl. For Rehearing at p. 2.)

RESCUE does not challenge our statutory duty to allocate funding for low-income energy efficiency programs under Public Utilities Code section 382, but rather the way in which it was allocated. Nevertheless, we note at the outset that we have the discretion to allocate funds in order to meet statutory objectives, which include ensuring the maximum delivery of services to eligible participants, and utilizing community-based entities with a demonstrated record of providing efficient and effective services. (Public Utilities Code section 381.5.)

Under the Equal Protection Clause of the United States Constitution, similarly situated persons are required to be treated the same. (City of Cleburne v. Cleburne Living Center (1985) 473 U.S. 432, 439.) Thus, a threshold question in equal protection analysis is whether there has been an invidious classification. Where there has been no such classification, equal protection analysis is not implicated. Here, there has been no such classification. The allocation factors adopted in Resolution E-3585 were applied on an equal basis to all utilities, taking into account the existing availability of funds from carryover funding. PG&E was allocated just over $29 million in 2001, and had a carryover balance of over $31 million, therefore, no further funding was allocated. In the same manner, SoCal had a carryover balance of just over $14.7 million, and received a proportionately small share of new funding, approximately $4.8 million. On the other hand, SDG&E used the bulk of its prior funding, and SCE had exceeded the funds available to it, leaving a relatively small amounts and a negative balance in their carryover accounts, respectively. Therefore these two utilities received the majority of new funding. Approximately $35 million was allocated between these two utilities. Thus, the Decision applies the same allocation criteria to each utility, and PG&E was treated the same as the other three investor-owned utilities.

Moreover, even assuming that an equal protection analysis is warranted by these facts, social and economic regulations not involving a suspect classification are reviewed under the rational basis standard. (FCC v. Beach Communications, Inc. (1993) 508 U.S. 307, 313-14.) Utilities have never been construed as a suspect class. Under rational basis review, a classification between utilities need only bear a rational relationship to a legitimate state purpose. (Ayala v. Superior Court (1983) 146 Cal.App.3d 938, 943.) The Decision adequately set forth a rational basis for not allocating new funds to PG&E. (Decision at pp. 52-58.) We applied the formula for allocating funding adopted in Resolution E-3585. (Decision at p. 52.) We explained our goal of rapid deployment of funding to ensure that the objectives of the Legislature, including reducing peak electricity demand and meeting the urgent needs of low-income households, were met during the summer energy crisis. (Decision at p. 57.) Our decision not to allocate additional funding where there was already a large unspent balance, and to allocate new funds to accounts where available funding from prior years was depleted, is rationally related to the goal of deploying funds in a manner where they will be used most effectively and efficiently. (Decision at p. 56.) In fact, we concluded that that to do otherwise would disadvantage the low-income customers in regions where available funding from previous years was utilized. (Decision at p. 56.) Moreover, we note that this practice is quite common in the allocation of government funding. By way of example, if the funds appropriated by SBX1 5 and ABX1 29 are not encumbered by March 31, 2002, they would revert to the State's General Fund. (Decision at p. 3.)

B. The Decision Does Not Violate the Commerce Clause

RESCUE contends that the decision grants an impermissible preference to non-profit companies within California, over private and out-of-state providers, arguing that such a preference discriminates against out-of-state providers in violation of the Commerce Clause of the United States Constitution. (Appl. for Rehearing at pp. 2-3.) We are not persuaded by this argument. RESCUE's arguments with respect to private contractors do not implicate the Commerce Clause, and are similarly unpersuasive.

In determining whether a regulation violates the Commerce Clause, the Supreme Court has established two approaches. If the regulation discriminates on its face by protecting in-state entities at the expense of out-of-state entities, it is presumed invalid, and may only be justified by a compelling state interest. (City of Philadelphia v. New Jersey (1978) 437 U.S. 617, 623-24.) If the statute regulates evenhandedly to effectuate a legitimate local public interest and only affects interstate commerce incidentally, the Court will balance the burden on commerce against the benefits to local interests provided by the statute. (Id. at p. 624; Pike v. Bruce Church (1970) 397 U.S. 137, 142.)

Here, the Decision does not differentiate between in-state and out-of-state businesses. The Decision concludes that the most effective way to reach the maximum number of qualifying households is to utilize existing programs and community-based LIHEAP providers already in place through DCSD network, and suggests three compatible leveraging scenarios. (Decision at p. 22.) This approach meets our goal of rapid deployment of services to low-income customers, and is consistent with the intent of the Legislature in ABX129 and SBX1 5. The Commission has the statutory duty to leverage funds for the CARE and LIEE programs and, specifically, to "[w]ork with state and local agencies, community-based organizations, and other entities to ensure efficient and effective delivery of programs." (Public Utilities Code section 327.) In fact, we acknowledged that utilities are not precluded from using non-LIHEAP providers where necessary to prevent bottlenecks in the delivery of services, and to ensure complete geographic coverage in the provision of services. (Decision at p. 26.)

Moreover, the Decision regulates evenhandedly, with only an incidental burden, if any, on interstate commerce. RESCUE has not explained how the rate assistance and weatherization services to customers of California utilities would have any significant impact beyond the local community. Thus, RESCUE has not met the standard for establishing legal error set forth in Public Utilities Code section 1732. Under this section, applicants for rehearing are required to set forth specifically the grounds on which the Decision is alleged to be lawful. (Public Utilities Code section 1732; see also

Public Utilities Commission Rules of Practice and Procedure, tit. 20, Cal. Code Regs., section 8.2, Rule 86.1.) In conclusion, the Decision greatly benefits the State's interests in reducing peak energy load and meeting the urgent need to assist low-income ratepayers with rising energy costs. Thus, the benefits to the community would outweigh any incidental burden on interstate commerce.

C. The Commission Applied the Appropriate Interest Rate to the Carryover Balance Account

Finally, RESCUE takes issue with the interest rate applied in the Decision to the carryover balance in the LIEE accounts. RESCUE argues that a pre-tax rate of return during the period the funds were held should have been imposed. (Appl. for Rehearing at p. 4.) We applied the 3-month commercial paper interest rate to the unspent balance, and added this amount to the carryover balance forward. This rate is consistent with the Commission's general practice with respect to interest on utility balancing accounts, and we see no reason to treat this account differently than similar balancing accounts. We have repeatedly held that the 3-month commercial paper rate represents a reasonable cost to finance balancing accounts, and is equally fair to the utilities' shareholders and ratepayers. (In the Matter of the Application of San Diego Gas & Electric Company [D.01-02-011] (2001) 2001 Cal. PUC LEXIS 224, 21-24.)

D. Oral Argument is Not Warranted

The Decision is consistent with prior Commission precedent, and we do not believe that the public interest would be served by conducting oral argument in this matter. We conclude that oral argument would not assist the Commission in resolving this matter. Therefore, RESCUE's request for oral argument is denied. (Public Utilities Commission Rules of Practice and Procedure, tit. 20, Cal. Code Regs., section 8.2, Rule 86.3.)

IV. CONCLUSION

For the reasons stated above, the application for rehearing is denied.

THEREFORE, IT IS ORDERED that:

1. RESCUE's application for rehearing is denied.
2. This proceeding is closed.

This order is effective today.

Dated October 10, 2001 at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners